VIRGINIA LAW REGISTER

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All Communications should be addressed to the PUBLISHERS

We regret to say that our Associate Editor, Mr. Daunis McBride, has resigned his position on the REGISTER and has removed to the Town of Houma in the State of Louisiana to practice law and "raise cane." It will be noted that the "cane" we refer to is the kind which makes sugar, and we trust that in both of the professions Mr. McBride has chosen he may be eminently successful. His work on the REGISTER speaks for itself, but the Editor in Chief cannot part with him without expressing the personal regret he feels in serving the pleasant association which always existed between himself and his associate, and for the valuable aid and counsel he always gave in the conduct of the REGISTER. We wish him all success.

Mr. McBride is succeeded by Mr. C. E. Savage, Jr., an alumnus of the Univ. of Va. Law School, whose work on The Michie Company's publications and past contributions to the REGISTER have given full evidence that the choice of the Publishers is a wise one.

The 1918 Meeting of the Virginia State Bar Association.

The Virginia State Bar Association met on the 13th, 14th and 15th of August at the Homestead Hotel, Hot Springs, Virginia. The meeting was called to order by Mr. Lewis C. Williams, of Richmond, Chairman of the Executive Committee, and the President's address, which was an exceedingly interesting one, was delivered by Mr. Harvey T. Hall, of Roanoke. On Wednesday morning a paper was read by Mr. Henry W. Anderson, Chairman of the Red Cross Commission to Roumania, upon "The Russian Revolution" and on the evening of that day an address on Uniform State Laws was delivered by

Mr. W. A. Blount, of Pensacola, Fla. On Thursday, August 15th, the annual address was delivered by Col. Eugene Wambaugh, of Harvard University, entitled, "The Constitution in War."

Lucien Cocke, of Roanoke, was elected President for the ensuing twelve months.

This being the first meeting since 1916 it was hoped that a much larger attendance than usual would be out but the reverse was the case, only thirty-three out of a membership of six hundred and thirty-one being present. Nothing of any practical value seems to have been undertaken at the meeting so far as the newspaper reports show. The REGISTER was not represented by any member of its staff and we do not believe it is ever likely to be so represented while the Association meets at The Hot. There has been a good deal of discussion amongst the members of the Association as to whether it might not be advisable to hold these meetings in the Capital City one year and in some of the larger cities of the Commonwealth alternating years. This would necessitate changing the date of the meeting but we do not believe this would make very much difference. August is to a certain extent the vacation month and lawyers are scattered from one end of the country to the other during that time. A winter month might be selected and the experiment made of a meeting in Richmond—say late in January or early in February.

The American Bar Association.

Despite the war the meeting of the American Bar Association at Cleveland, on August 28th, 1918, was well attended. This Association *does* things and has a record for accomplishment to be proud of. We were much interested in the report of the Commissioners on Uniform State Laws—which is of peculiar interest to Virginians from the face that our Col. Eugene C. Massie and Jas. R. Caton—the Virginia Commissioners—took an active part in the deliberations of the conference of those Commissioners held just prior to the meeting of the Association.

The report of the Secretary shows the approval by the Con-

ference of quite a number of acts making various laws uniform in the various states of the Union, recommended for passage by the legislatures of the States. They are some thirty-four in number, commencing with An Act Relating to the Acknowledgment of Written Instruments, recommended in 1892. They are as follows:

An Act Relating to the Acknowledgment of Written Instruments; An Act Relating to the Sealing and Attestation of Deeds and Other Written Instruments; An Act Relating to the Execution of Wills; An Act Relative to the Probate in this State of Foreign Wills; An Act as to Promissory Notes, Checks, Drafts and Bills of Exchange (Days of Grace); A Table of Weights and Measures; Uniform Negotiable Instruments Act; An Act to Establish a Law Uniform with the Laws of Other States Relative to Divorce Procedure and Divorce from the Bonds of Matrimony (This was divided into two acts at the Conference in 1901 as follows: An Act to Establish a Law Uniform with the Laws of Other States Relative to Migratory Divorce; An Act to Establish a Law Uniform with the Laws of Other States Relative to Divorce Procedure and Divorce from the Bonds of Matrimony); An Act to Establish a Law Uniform with the Laws of Other States Relative to Insurance Policies. Uniform Sales Act; Uniform Warehouse Receipts Act; Uniform Bills of Lading Act; Uniform Stock Transfer Act; An Act Relating to Desertion and Non Support of Wife by Husband, or of Children by Either Father or Mother and Providing Punishment Therefor, and to Promote Uniformity between the States in Reference Thereto; An Act Relative to Wills Executed without the State and to Promote Uniformity among the States in That Respect; An Act Relating to and Regulating Marriage and Marriage Licenses and to Promote Uniformity between the States in Reference thereto; Uniform Child Labor Law; An Act on the Subject of Marriage in Another State or Country in Evasion or Violation of the Laws of the State of Domicile; An Act to Make Uniform the Law of Acknowledgments to Deeds or Other Written Instruments Taken Outside the United States; Uniform Partnership Act; Uniform Cold Storage Act; Uniform Workmen's Compensation Act; Uniform Foreign Probated Wills

Act; Uniform Land Registration Act; Uniform Limited Partnership Act; Uniform Act for the Extradition of Persons of Unsound Mind; Uniform Flag Law.

The following acts though not drafted by the Conference have received the approval of this organization:

An Act Relating Annulment of Marriage and Divorce; An Act Providing for Return of Statistics Relating to Divorce Proceedings; An Act Providing for Return of Marriage Statistics; Federal Pure Food Law; Federal Pure Food Law, Amended; Standard Bill for Occupational Disease Reports; Standard Bill for Industrial Accident Reports.

No one can question the advisability of all the States having uniformity in the Acknowledgment of Written Instruments and yet only eight of the States, territories and Federal districts out of fifty-three have adopted this Act—Iowa, Massachusetts, Michigan, Minnesota, Montana, New Mexico, North Dakota and Alaska. The Negotiable Instruments Act has been adopted by every one of the states and territories except Idaho, Porto Rico and Texas. The Insurance Policies Act has not been adopted in any state; neither has that of Table of Weights and Measures. The Warehouse Receipts Act has been adopted in forty-two states—Virginia amongst them; twenty-two states have adopted the Bills of Lading Act.

We were somewhat surprised—to find that only fourteen states had adopted a Uniform Land Registration Act. We would like to know how many suits have been brought in Virginia under the Torrens Act? Personally we do not know and have not heard of a single one.

Six states have adopted an Uniform Act for the extradition of Persons of Unsound Mind—an act the wisdom of which we think is very doubtful. Fourteen states have adopted a Uniform Stock Transfer Act. Only one—Wisconsin—has adopted the Migratory Divorce Act. The Marriage License, Divorce Proceedings, Federal Pure Food Law and Flag Law have each been adopted by two states; Foreign Acknowledgments by five, and Partnership Act by eight. Every state in the Union should have a uniform act on this important subject. Nineteen have adopted the Sales Act—Virginia amongst them.

This showing is a most creditable one, and with steady, but

most commendable zeal this branch of the Association is pressing on to the accomplishment of its work. It is necessarily slow, having to combat conservatism and stupidity, and many local laws and customs, but we believe it will in the end succeed in reaching the most useful and valuable end it has set before it.

Adverse Possession—Lien of Judgment—Section 2915 of the Code.

The case of *McClanahan's Administrator* vs. *Norfolk & Western Railway,* decided by our Supreme Court of Appeals in June is remarkable in more ways than one. It was an action brought to subject certain land in the city of Roanoke to judgments which land had originally belonged to a man named Rorer, and was claimed to be held by the Norfolk & Western Railway Company by adverse possession, and by the School Board of Roanoke City as to another tract under a complete equitable title. The very able opinion of Judge Kelly settles in a most clear and convincing way the effect of adverse possession and leaves no room for future argument as to the sort of title adverse possession confers. As the learned Judge says, "It is good against the world." . . . . . It is a new, independent and indefeasible title—one paramount to and good against that of all other persons, no matter how or when such other title may have been derived or in what form or forum it may be asserted or sought to be made effective. The adverse occupant who has held for the statutory period does not stand in the position of a grantee from the former true owner, but his occupancy has, by authority of the State speaking through the statute, extinguished all other titles, and has vested in him an absolute and exclusive right to the possession." The majority of the Court hold that Section 2915 of the Code applies as well to a suit to enforce the lien of a judgment as to "an entry on" or "action to recover any land," and that therefore the Statute of Limitations applies as well to a suit to enforce the lien of a judgment as it would to an action of ejectment. The Court reaches this conclusion by a very logical statement as to the effect of a sale of lands to sat-

isfy judgment liens. "A judicial sale of lands to satisfy liens is not a source of title, but merely a transmission of the title sold, and if at the time of sale such title would not enable the holder thereof to make an entry or maintain an action, the purchaser cannot acquire any right of entry or action."

It was conceded that *Flanary* v. *Flanary,* 102 Va. 547, was in conflict with this point, but the Court differentiates between the two cases, because in this latter case the judgment debtor had parted with his title and the occupant was holding under and in privity with it; the possession was rightful and there was no one to sue for possession. In the case at bar the opposite was the case.

Judge Burks in an opinion written with his usual clarity and force, differs with the majority of the Court in this respect and holds that a suit to enforce the lien of a judgment is not an action to recover land and believes that *Flanary* v. *Flanary* is authority for that proposition. He therefore holds that the defense of adverse possession to complainant's judgments cannot be sustained.

There is a very remarkable difference in the views of Judge Burks and of the majority of the Court upon a very vital question in the case. The majority hold that these judgments were recovered after the adverse possession had commenced to run, and limit their decision in the present case as a precedent to cases in which liens have been obtained subsequent to the beginning of the adverse occupant's claim of title.

Judge Burks claims that the judgments being obtained *before* the title by adverse possession had been acquired bound the land. In other words, that the bar of the statute did not apply because it was long after they were obtained that the title of the Norfolk & Western Railway Company ripened into a complete one by adversary possession. The judgments were recovered and docketed in 1884, 1885 and 1886. The Railway claimed that its predecessor in title entered upon the land against which these judgments were attempted to be enforced in 1883, so that its title did not ripen until 1898.

It does look to us as if there was much to be said in favor of this view. At the time those judgments were recovered the Rail-

way Company did not have the title "good against the world," but were in process of acquiring it. We can liken it to the case of a purchaser whose deed was prior to the judgments, but held in escrow because of a balance due of purchase money and not recorded. Later on in his opinion Judge Burks shows that such a purchaser's land, it is true, can only be held bound to the extent of the balance due on the purchase money, thus overruling *Fulkerson* v. *Taylor,* 102 Va. 314. But the illustration is good anyway. For the purchaser whose deed is in escrow does not obtain complete title until his deed is delivered—just as the claimant by adverse title does not obtain complete title until the statutory period has elapsed—fifteen years in the present case. Now the element of time may be likened to the purchase money—the deed being, so to speak, held in escrow until the entire purchase money of fifteen years is "paid" in full. Nothing is "paid" until the fifteen years have elapsed and therefore the land is subject to the judgments.

Judge Sims in a brief but very clear and able opinion concurs in the results reached by the majority of the Court but agrees with Judge Burks that Section 2915 does not apply to a suit to enforce the lien of a judgment and holds that the lien of a judgment having once attached to land, no subsequent act of the debtor or of others ousting him from this land can affect the lien given by the statute as long as the judgment is alive. There is, however, much force in the other view: That the judgments against Rorer could not operate against their adverse possession any more than a conveyance by him. In other words Rorer's only right was to commence an action before the end of the Statutory Period: His judgment creditors could have no more right than he had and not having commenced their suit in time were forever barred.

These two dissenting opinions do seem to us however very strong arguments in favor of the views they present, but the law is now fixed as follows:

1st. Section 2915 applies to a chancery suit to enforce judgment liens.

2nd. Liens obtained subsequent to the *beginning* of an ad-

verse occupant's claim of title do not bind the land thus adversely claimed.

3rd. *Fulkerson* v. *Taylor,* 102 Va. 314, is overruled and the lien of a judgment only binds any residue of purchase due upon an incomplete equitable title. It is not necessary now to be invested with a perfect equitable title by payment of the whole of the purchase money, to avoid a sale of land for judgment liens.

Married Women. Right of Married Woman to Sue for Damages for Assault by Husband, or the Administrator of a Married Woman to Sue the Husband for Causing His Wife's Death.

The case of *Keister's Administrator* vs. *Keister,* decided at the June Term of our Supreme Court of Appeals has caused a good deal of discussion amongst the profession. The decision of the Court, which was unanimous, held that Section 2286a of the Code of 1904 did not permit a wife to sue her husband for a tort or permit the personal representative of a deceased wife to sue the husband for causing her death. Section 2286a provides that a married woman shall have the right to acquire, etc., property as if she were unmarried, and "An unmarried woman may contract and be contracted with, sue and be sued in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by or against her shall have accrued before or after the passage of this act." Judge Sims, delivering the opinion of the Court, enters very fully into the whole question of the rights of married women under the statute and holds that the Common Law rule has not been changed by this statute, in spite of the broad language in the concluding clause. We believe that this decision of the Court will take a large number of the members of the profession by surprise, especially in view of the fact that in the various so-called Married Women's Acts the Legislature heretofore, especially in 2284 of the Code of 1887, provided "That nothing, however, in this or any other section of this chapter shall be construed as giving to a married woman a right of damages or a right of action therefor

against her husband for any injury to her person or reputation committed by him before marriage or during the 'coverture." It will be noted that this no longer appears in Section 2286a, and it was strongly argued at the bar of the court that the omission of this language in the present act was a clear indication of the intention of the Legislature that a married woman should have a right to sue her husband for damages for injury to her person or reputation. We must confess that the opinion of Judge Sims, as able as it is, does not entirely convince us that the intention of the Legislature could have been otherwise than was contended for by the plaintiff in this suit. Judge Burks, who writes a concurring opinion, states that statutes in abrogation of the Common Law are to be strictly construed, but by a reference to *Burks' Separate Estate,* page 59, Judge Burks seems to hold that the Virginia Statute certainly as to a married woman's separate estate should be strictly construed in ascertaining what is to be held as separate estate, but liberally construed when declaring the powers of married women over what had been made a separate estate by the statute—in other words, that the act is an enabling act and should be liberally construed. See Burks on Separate Estates, page 59, *et seq.*

Quoting Mr. Bishop in Volume 2 of his book on the *Law of Married Women,* referring to an opinion of Judge Brown in the New York case he says as follows: "The acts referred to are remedial statutes intended to remedy and remove a disability which was thought to be unwise, unjust and a reproach to the civilization of the age. They must, therefore, have a liberal and beneficent interpretation so as to give effect to the intention of the Legislature, notwithstanding some of the results may seem to proceed beyond the letter of the acts. Similar remedial statutes are properly termed enabling and by some judges these married women's statutes are called enabling ones—of course, therefore to be liberally construed. Thus in Pennsylvania, Thompson, C. J., speaking of the Married Women's Act of 1848, said, 'That act is an enabling and enlarging act; it is of the very nature of such acts that they are to be administered in the spirit of the rights enlarged by them. Such legislation implies an in-

tention to reform or to extend existing rights and it cannot be that it is the duty of the courts to render them as unavailing as possible to the ones intended to be benefitted, by harsh and unpractical views and rules.'" And Judge Burks goes on, on page 61: "The statute was intended for the better preservation and protection of the rights of property of married women and should receive such construction as would not only preserve their property rights but also to protect them in the enjoyment of those rights, as well against the claims and demands of their husbands as of third parties.

When this statute was enacted a woman might have had a common law estate and an equitable estate also. Her rights, powers and responsibility were widely different as to one of these from what they were as to the other. The remedies were different, administered under different rules and at different forums. Now this statute, as all others, is to be construed as far as practical in harmony with the existing unwritten law, but here are two systems of unwritten laws, differing widely on almost every question of controversy, arriving at conclusions by different rules and construing the position of the married woman and her property rights from different standpoints. Which of the two systems of unwritten law are the courts to follow? Plainly the system applicable to equitable separate estates. We say plainly, because the very act itself evinces the intention on the part of the Legislature to give her at law what she already had in equity. The intention was to sever the union between husband and wife as to property rights and to treat her so far as related to property as separate and apart from her husband. On page 73 the statute makes no provision as to torts by or against a wife, but leaves them as before its passage. No right of action is given her alone for torts to her person, nor are damages for torts committed upon her made her separate estate."

And again on page 78, commenting on Section 2284 Judge Burks says:

"Section 2284 is very broad, and, as we understand it, gives to the married woman all that she can acquire, or become entitled to in any manner whatever. All the subsequent language

of this section and of Section 2287 seems to indicate that the words 'or in any other manner whatever' are not intended to be restricted to methods of acquisition *ejusdem generis,* but to be very general and to include every other method of acquisition whatever not specifically mentioned, except that work and labor performed for her husband or her children are not presumed to be on her separate account. For the latter it is presumed she would not be allowed to make a charge. Her rights in action are hers. Damages recovered for wrongs to her person, as well as to her property, are made separate estate, compensation for her separate property taken for public use is separate property, all income and profits from her separate estate are hers, and her time and labor, except what modicum she may choose to bestow on her husband and children, are hers to dispose of as she will, without let or hindrance from any one. If she thinks fit, she may engage in trade and carry on business on her own account, or as a partner with any one except her husband, and devote her whole time and attention, and take all of the profits to her separate use. And so, though it is still the duty of the husband to support and maintain the wife, and he is still responsible for her torts, he is no longer entitled to her earnings, nor to any portion of her time, work, or labor except what she may choose to give him." It is true this language is all in reference to the separate estate of married women, but is not the reasoning equally applicable to the case at bar?

Section 2284 as it stood when Judge Burks' book was written expressly prevented the wife from suing her husband for injuries to her person or reputation committed before marriage or during the coverture, but in the present section as we have stated, this language has been eliminated. Section 2284 in the Code of 1887 was silent as to the responsibility of a husband for his wife's torts unless "they related to, affected, or were connected with her separate estate" and therefore subject to the restriction as to her separate estate before mentioned, the husband would be liable in damages for torts committed by his wife; but in Section 2286a a husband was expressly relieved from any responsibility for any contract, liability or tort of his wife. We

repeat the language of Section 2286a in regard to the right of a married woman to sue.

"A married woman may contract and be contracted with, sue and be sued in the same manner and with the same consequences as if she were unmarried, whether the right or liability asserted by or against her shall have accrued before or after the passage of this act." It is hard for us to see how language could have been broader, and if taken in connection with the fact that the legislators struck out the former limitation in regard to the wife suing her husband for a tort, it seems to us that that body intended to give a married woman the right to bring any sort of a suit against any person exactly as if she were at the time an unmarried woman.

Of course the law is now settled and this discussion is merely academic, but we can well understand how a suit of this character could have been advised by almost any lawyer in the State. At the same time we think it a subject of congratulation that the decision is as it stands. No matter what the Legislature intended to mean, nothing but the most clear and explicit language should have been sufficient to make such an unwise and deplorable change in the law as it stood and to allow a suit of such a nature to be brought.